

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7055

Petition of F. Folger and Liz Tuggle vs. Verizon	)	
New England Inc., d/b/a Verizon Vermont, in re:	)	Hearing at
dispute concerning quality of service issues at their	)	Norwich, Vermont
residence in Norwich, Vermont	)	April 1, 2005

Order entered: 12/19/2005

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: F. Folger Tuggle, Pro Se

Pamela J. Porell, Vice President, Verizon Vermont  
for Verizon New England Inc., d/b/a Verizon Vermont

**I. INTRODUCTION**

On January 27, 2005, F. Folger Tuggle and Liz Tuggle (the "Tuggles") of Norwich, Vermont, filed a petition with the Public Service Board ("Board") alleging that their telephone service provided by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon" or "Company") was inadequate. The Tuggles asserted that they were experiencing significant service issues, and that even though Verizon was aware of this, it billed the Tuggles for service at the full service rate. The Tuggles contended that this constituted over billing and fraud, and they requested that Verizon be directed to refund to them a portion of the amounts they paid on these bills.

On April 1, 2005, a technical hearing was held in this matter. In attendance were Mr. F. Folger Tuggle, appearing pro se, and Pamela J. Porell representing Verizon. Also in attendance was Kathleen O'Connor, staff director, Verizon.

During the technical hearing the following were admitted as evidence:

- (1) The Petition, and a copy of an e-mail communication between Gordon Lawrence of Verizon and Kathleen Hentcy of the Vermont Department of Public Service.<sup>1</sup>
- (2) Telephone bills from Verizon for the Tuggles' three telephone accounts.<sup>2</sup>
- (3) A telephone bill from Verizon to Liz Julian-Tuggle for Verizon telephone number (802) 649-2900.<sup>3</sup>
- (4) A diagram of Verizon service wires.<sup>4</sup>
- (5) A "Repair History" covering the period 2001-2004 for the Tuggles' telephone lines.<sup>5</sup>

At the technical hearing, Verizon requested that Exhibit Verizon 1 (the diagram of service wires) be admitted as confidential information. Mr. Tuggle did not object. I then determined that it was appropriate to designate this exhibit as Confidential Information. Accordingly, Exhibit Verizon 1 has been placed in a sealed record on which has been endorsed the caption and docket number of this proceeding, the nature of the contents and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by order of the Hearing Officer or the Board. Notwithstanding such a statement, the parties to this docket, the members of the Board, and any employee or consultant specifically authorized by the Board to assist the Board in this proceeding and any Hearing Officer appointed to this Docket, may have access to such sealed Confidential Information, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound to keep the information confidential. The Board will retain jurisdiction to make such amendments, modifications and additions to this designation as it may, from time to time, deem appropriate. Any person may apply to the Board for an amendment, modification or addition to this designation.

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1. Exh. Tuggle 1; tr. 4/1/05 at 9.

2. Exh. Tuggle 2.

3. Exh. Tuggle 3.

4. Exh. Verizon 1.

5. Exh. Verizon 2.

On April 5, 2005, F. Folger Tuggle and Elizabeth Tuggle filed additional comments.<sup>6</sup> No objection to admission of these comments as evidence was filed by Verizon. Accordingly, these comments have been admitted as evidence, consistent with the Procedural Order issued in this docket on April 7, 2005.

On April 20, 2005, Verizon filed "Additional Verizon Information" and a revised Exhibit Verizon 2.<sup>7</sup> No objection to admission of these items was made by the Tuggles. Accordingly, each of these items has been admitted as evidence consistent with the Procedural Order issued in this docket on April 7, 2005.

Each of the items filed by Verizon on April 20, 2005, bears the words "Proprietary Information." However, Verizon has not filed a motion to treat these items as confidential. In the absence of a properly supported motion requesting that these items be treated as confidential, they cannot be designated as Confidential Information. Verizon may file such a motion on or before October 18, 2005, the Tuggles shall have until October 25, 2005, to file any objection to any such motion made, and I will thereafter make a ruling on any such motion made. In the event that no such motion is timely filed, the items shall not be treated as Confidential Information.

In accordance with the provisions of 30 V.S.A. § 8, I hereby report the following to the Public Service Board.

## **II. FINDINGS**

1. The Tuggles have been customers of Verizon for at least the past seven years; they currently have three telephone lines located at their residence in Norwich, Vermont. Petition at 1; tr. 4/1/05 at 16 (Tuggle).<sup>8</sup>

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6. Letter of F. Folger Tuggle and Elizabeth Tuggle, dated April 3, 2005.

7. Letter of Pamela J. Porrell, dated April 20, 2005.

8. The Tuggles' Verizon line "649-2330" was installed 6/3/87, their line "649-3787" was installed 12/2/89, and their line "649-1395" was installed 4/9/98. Exh. Verizon 2.

2. For the past seven years, there has been a persistent noise on the Tuggles' telephone line(s), which has been so loud that has been difficult to have conversations using these telephone lines. Petition at 1; tr. 4/1/05 at 12-13 and 17-18 (Tuggle).

3. Over the past seven years the Tuggles have complained repeatedly to Verizon about this noise. Petition at 1; tr. 4/1/05 at 36 and 39 (Porell); exh. Verizon 2.

4. Over the past seven years Verizon periodically performed repair work on the Tuggles' telephone lines, but was unsuccessful in eliminating the loud noise problem until January 2005. Tr. 4/1/05 at 14, 16, 21, and 42-43. (Tuggle).

5. Between May 7, 2001, and October 9, 2004, Verizon gave the Tuggles a total of \$147.55 in credits against their telephone accounts. Of this total, \$28.26 was categorized as either an "automatic service credit" customarily given when a customer's line is completely out of service for more than 24 hours, or a "prorated service credit" for loss of service in excess of 24 hours. The remaining \$119.29 was categorized as "Courtesy Credits" (also called good will credits) given at the discretion of Verizon because of service problems experienced by the Tuggles. Tr. at 36-37 and 45 (Porell); exh. Verizon 2.

### **III. DISCUSSION**

The sole question for resolution in this case is whether Verizon should refund to the Tuggles a portion of their paid telephone bills applicable to the time periods during which there was a persistent noise that interfered with their telephone service. For the reasons discussed below, I conclude that a refund of a portion of the sums paid by the Tuggles to Verizon is appropriate.

The Tuggles have characterized their Verizon telephone service over the past seven years as "poor."<sup>9</sup> At the technical hearing, Mr. Tuggle described different types of problems he experienced with this service. First, he explained that approximately five times during the last

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9. Petition at 1; tr. 4/1/05 at 9 (Tuggle). At the technical hearing, Mr. Tuggle also criticized Verizon for what he perceived to be disorganization to the point of inappropriate business practice, as evidenced by Verizon's billing him for service that was not yet installed. Tr. 4/1/05 at 26-27 (Tuggle).

seven years, his telephone line lost both dial tone and ringer.<sup>10</sup> These particular problems apparently recurred on a cyclical basis, but Verizon remedied them each time that the Tuggles complained specifically about them.<sup>11</sup>

The Tuggles also complained to Verizon about a constant hum in their telephone line(s), as well as "noise on the line so significant that you cannot have a conversation, a different kind of noise than just a background hum."<sup>12</sup> It is unclear from the evidence in this docket whether the background hum still persists.<sup>13</sup> However, it is clear that the "significant" noise problem persisted over at least seven years prior to its being remedied at the end of 2004, and that it is this "significant" noise problem that is the focus of the Tuggles' request for reimbursement.<sup>14</sup>

30 V.S.A. § 209(a) gives the Board jurisdiction:

to hear, determine, render judgment and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line or property subject to supervision under this chapter, and shall have like jurisdiction *in all matters respecting . . .*

*(4) The price, toll, rate or rental charged by any company subject to supervision under this chapter, when unreasonable or in violation of law; [and]*

The sufficiency and maintenance of proper systems, plants, conduits, appliances, wires and exchanges. . . (emphasis added).

On the basis of the evidence in the record of this docket, I conclude that it was unreasonable for Verizon to charge the Tuggles as it did for telephone service during the period that Verizon knew or should have known that the Tuggles were experiencing a significant noise problem that adversely impacted their use of their telephone lines.

Mr. Tuggle testified that, in every communication he had with Verizon over the past seven years, he indicated that his telephone service was terrible and he specifically complained

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10. Tr. 4/1/05 at 15 (Tuggle).

11. Tr. 4/1/05 at 15 (Tuggle).

12. Tr. 4/1/05 at 13 (Tuggle).

13. Tr. 4/1/05 at 62- 63 (Tuggle).

14. Tr. 4/1/05 at 12-13 and 15-16 (Tuggle).

about noise on the line.<sup>15</sup> He stated that sometimes he spoke on the telephone with customer service representatives, and sometimes he spoke with Verizon employees in the field (such as technicians, engineers and foremen). The Tuggles stated that they spoke with "line workers, supervisors and engineers" who acknowledged that "Verizon was aware that this [noise and other issues] was a persistent problem."<sup>16</sup> In addition, at the technical hearing, Mr. Tuggle testified that, during this past winter, he spoke with a Verizon technician or engineer "specifically about service problems over time, and he was very forthcoming with the problems that they had had, that he knew they existed."<sup>17</sup>

Verizon did not affirmatively challenge Mr. Tuggle's claim that he complained about noise on the line every time that he spoke with Verizon. Rather, on the question of the substance and frequency of the Tuggles' contacts with Verizon, the company presented a summary of telephone contacts made by the Tuggles over the past four years to Verizon customer service representatives ("Summary").<sup>18</sup> Verizon did not dispute Mr. Tuggle's assertion that, in addition to his telephone contacts with customer service representatives, he also had complained directly to Verizon field personnel on numerous occasions.

I find Mr. Tuggle's testimony credible, and I am persuaded that he complained about significant noise on his line every time that he spoke with Verizon personnel over the past seven years, whether on the telephone with customer service, or in the field with line workers, foremen, supervisors or engineers.

I now turn to identifying a date from which Verizon should make a refund to the Tuggles. Because Mr. Tuggle did not keep a log of all of his communications with Verizon, he did not cite a specific date for the first complaint made to the company about the significant noise problem.<sup>19</sup>

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15. Tr. 4/1/05 at 64 and 67 (Tuggle).

16. Petition at 1.

17. Tr. 4/1/05 at 27-28 (Tuggle).

18. Exh. Verizon-2; tr. 4/1/05 at 45-46 and 61-62 (Porell). Although the Tuggles complained about poor service over the past seven years, Verizon could only produce a trouble report history for the past four years. Tr. 4/1/05 at 36 (Porell).

19. Tr. 4/1/05 at 46 (Porell).

Rather, Mr. Tuggle emphasized that the significant noise problem existed for at least the last seven years, and that he specifically complained about noise on the line each time that he communicated with Verizon. In addition, Mr. Tuggle testified that a Verizon engineer had indicated to him that Verizon knew that service problems had existed "over time."<sup>20</sup> However, Mr. Tuggle could not provide a specific date from which Verizon had knowledge that his service problems persisted.

Verizon chose not to present evidence concerning when its engineers may have had knowledge about the existence of the Tuggles' significant noise problem.<sup>21</sup> Instead, Verizon relied solely on its Summary, which shows May 7, 2001, as the first date within the past four years on which the Tuggles complained to the Company's customer service department. The Summary cites "Data" as the complaint made on May 7, 2001.<sup>22</sup> However, Verizon did not offer a detailed explanation of how the Summary was compiled, nor did it assert that the specific complaints appearing on the Summary were the only matters discussed on the respective dates noted. Hence, there is nothing in the evidence of this docket that disputes Mr. Tuggle's assertion that he complained about significant noise on his telephone lines every time that he spoke with Verizon, including all contacts he made with Verizon's customer service department.

While I am persuaded that Mr. Tuggle complained about significant noise on his telephone lines every time that he spoke with Verizon personnel over the past seven years, he offered no evidence that showed, with specificity, when or how often such complaints were made. Similarly, Verizon's records shed no specific light on complaint activity prior to the year 2001. Because the evidence does not reveal a particular date for the Tuggles' first complaint to Verizon, because the Tuggles did receive telephone service (albeit poor service) over the past

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20. Tr. 4/1/05 at 27-28 (Tuggle). With regard to the crossbox that services his home Mr. Tuggle commented that Verizon "might as well have an office there." Tr. 4/1/05 at 35.

21. At the conclusion of the technical hearing, the parties were given additional time to submit information from technical personnel concerning why it took Verizon so long to remedy the Tuggles' significant noise problem. In response, Verizon said "if we feel that it's best to have them [technical personnel] explain it, then we will offer that up." Tr. at 67-73 (Porell). No such information was filed.

22. The summary shows October 2003 as the first date on which "noise" was noted by Verizon's customer service department as the problem. Exh. Verizon 2. tr. 4/1/05 at 61-62 (Tuggle).

seven years, and because Verizon's records show May 7, 2001, as the first contact in the year 2001 made by the Tuggles to the Company's customer service department, I conclude that it is reasonable to establish May 7, 2001, as the date from which Verizon should make a refund to the Tuggles.

Finally, I note that the Tuggles' experience suggests that Verizon did not have an effective system in place to address complaints about telephone service problems that are of an ongoing or continuous nature. First, Verizon's practice appeared to have been driven solely by one-at-a-time customer complaints without regard to whether there was a problem of an ongoing nature, and without any follow-up by the Company. As explained by Pamela Porell, state vice president of Verizon, "if a customer complains, we go out and fix it, we think it's fixed, if they don't call back and say it's not fixed, we assume it's fixed."<sup>23</sup> In addition, the facts in this case suggest that there was no system in place for ensuring that customer complaints made directly to technical personnel in the field were communicated to Verizon's customer service department (or other appropriate department ) for response or other action.<sup>24</sup> Apart from explaining Verizon's one-at-a-time process for resolving customer complaints, the Company offered no explanation as to why it had taken so long to come up with a "creative idea" that resolved the Tuggles' problem.<sup>25</sup> Under these circumstances, Mr. Tuggles' expressed frustration and dissatisfaction with Verizon's lack of response to his ongoing noise problem is fully understandable and justified.<sup>26</sup>

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23. Tr. 4/1/05 at 44.

24. Tr. 4/1/05 at 61-62 (Tuggle).

25. At the technical hearing, Mr. Tuggle asked, several times, why Verizon took so long to resolve the noise problem. He also suggested that a Verizon engineer be asked that question. As noted above, at the conclusion of the technical hearing, the parties were given additional time to submit information from technical personnel concerning why it took Verizon so long to remedy the Tuggles' significant noise problem. Verizon did not file any such information.

26. Tr. 4/1/05 at 25 and 54-55 (Tuggle). As expressed by Mr. Tuggle at the technical hearing: "You call so many times, nobody fixes it, nobody changed it. Do you call every day?" Tr. 4/1/05 at 64 (Tuggle). See also tr. 4/1/05 at 7-8, 10, and 55 (Tuggle).



#### **IV. CONCLUSION**

For the reasons discussed above, I conclude that, under 30 V.S.A. § 209(a), it was unreasonable for Verizon to charge the Tuggles as it did for telephone service during the period that Verizon knew or should have known that the Tuggles were experiencing a significant noise problem that adversely impacted their use of their telephone lines. I further conclude that Verizon should refund to the Tuggles all amounts billed to them and paid by them for that portion of their service that was impacted directly by the significant noise on the line. Accordingly, I recommend that the Board order Verizon to refund to the Tuggles, for each of their three telephone lines,<sup>27</sup> charges for local measured service (including residence-dial tone line and residence-local usage), Verizon local calls, regional toll calls, and the portions of the Vermont and Federal taxes and the Vermont Universal Service Fund charges that arose as a result of the above-listed services. I recommend that this refund, with interest, be applicable to the period May 7, 2001, through December 31, 2004, and that it be offset by the \$147.00 in credits already given by Verizon to the Tuggles. Finally, I recommend that the Board require that this refund, with interest, be made as a lump sum payment to the Tuggles on or before December 15, 2005.<sup>28</sup>

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of December, 2005.

s/Judith M. Kasper  
Judith M. Kasper, Esq.  
Hearing Officer

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27. Lines (802) 649-2330, (802) 649-3787, and (802) 649-1395.

28. The Tuggles specifically requested that any refund that might be ordered be made as a lump sum payment. Petition at 2. Verizon did not object or otherwise comment on this request.

### **V. BOARD DISCUSSION**

We have reviewed the record in this docket, and the parties' comments on the Proposal for Decision. We adopt the conclusion of the Hearing Officer that, under 30 V.S.A. § 209(a), it was unreasonable for Verizon to charge the Tuggles as it did for telephone service during the period that the Tuggles were experiencing a significant noise problem that adversely impacted their telephone service. Verizon did not dispute that the Tuggles "had service issues" and did not offer any explanation as to why it took so long to resolve the significant noise problem.<sup>29</sup> Moreover, we are concerned about the effectiveness of Verizon's system for addressing customer complaints about service problems that are of an ongoing nature. For example, the record indicates that Verizon's Consumer Business Office (the department that handles compensation to customers) does not have direct access to a customer's repair history, a factor central to evaluating customer requests for compensation.<sup>30</sup>

Notwithstanding our conclusion that the Tuggles are entitled to a partial refund, we do not adopt the Hearing Officer's recommendation about how to calculate that refund. Rather, we conclude that the evidence supports a partial refund of sums paid by the Tuggles commencing seven years prior to the date that the Tuggles filed their petition.<sup>31</sup> We find that the Tuggles' use of their telephone lines over the past seven years had some value, and therefore, we conclude that Verizon should refund to the Tuggles, for each of their three telephone lines,<sup>32</sup> Fifty Percent (50%) of the charges for local measured service (including residence-dial tone line and residence-local usage), Verizon local calls, regional toll calls, and the portions of the Vermont and Federal taxes and the Vermont Universal Service Fund charges that arose as a result of the above-listed services.<sup>33</sup> We further conclude that this refund, with interest, should be applicable to the period January 27, 1998, through December 31, 2004, and that it should be offset by the \$147.00 in credits already given by Verizon to the Tuggles. Interest shall be calculated using Verizon's

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29. Tr. 4/1/05, at 39; *see*, footnote 25, above.

30. Additional Verizon Information at 4.

31. The petition was filed on January 27, 2004.

32. Lines (802) 649-2330, (802) 649-3787, and (802) 649-1395.

33. Charges for ancillary services (such as Caller ID, Call Waiting, and Call Forwarding) are not to be included in the refund.

composite cost of capital. Finally, we adopt the Hearing Officer's recommendation that this refund, with interest, be made as a lump sum payment to the Tuggles.<sup>34</sup>

#### **VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), shall refund to F. Folger Tuggle and Liz Tuggle (the "Tuggles"), for each of their three telephone lines,<sup>35</sup> Fifty Percent (50%) of the charges for local measured service (including residence-dial tone line and residence-local usage), Verizon local calls, regional toll calls, and the portions of the Vermont and Federal taxes and the Vermont Universal Service Fund charges that arose as a result of the above-listed services ("Refund"). The Refund, with interest, shall be applicable to the period January 27, 1998, through December 31, 2004, and shall be offset by the \$147.00 in credits already given by Verizon to the Tuggles. Interest shall be calculated using Verizon's composite cost of capital.

2. The Refund shall be made by Verizon as a lump sum payment, with interest, to the Tuggles, on or before February 1, 2006.

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34. The Tuggles specifically requested that any refund that might be ordered be made as a lump sum payment. Petition at 2. Verizon did not object or otherwise comment on this request.

35. Lines (802) 649-2330, (802) 649-3787, and (802) 649-1395.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of December, 2005.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: December 19, 2005

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*